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Vermont Fair Housing News

A Publication of the Vermont Human Rights Commission and the Fair Housing Project of CVOEO

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A CONFERENCE IN RECOGNITION OF FAIR HOUSING MONTH

April is National Fair Housing Month. Governor Douglas has also declared April Vermont Fair Housing Month. To recognize this event, there will be a conference titled "Discrimination in Vermont—It Can Happen Here." The conference will take place at Vermont College of Union Institute in Montpelier, Thursday, April 29, 2004, from 9:00 a.m. until 3:00 p.m. Registration is free, and lunch will be provided. All are welcome, but numbers are limited, so please register soon. You will find more information about the conference, and a registration form, inside the Vermont Fair Housing News.

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SECTION 8 AND FAIR HOUSING

In recent years, one of the most controversial subjects in Vermont Fair Housing law has been the federal housing assistance program entitled Section 8. The debate centers around whether refusal by a landlord to participate in Section 8 constitutes illegal discrimination. On the one hand, many landlords view Section 8 as a voluntary federal program, which does not require their participation if they so decline. On the other hand, the Vermont Fair Housing Act states that it is illegal to discriminate against a person because that person receives public assistance, including federal housing assistance. In several recent cases, the Vermont Human Rights Commission has determined that a landlord violates the Vermont Fair Housing Act by refusing to consider an application from a tenant solely because that person receives Section 8 housing assistance.

HOW DOES SECTION 8 WORK?

Section 8 assists people with low income by paying most of their monthly rent. Under the program, low-income individuals and families may qualify for a Section 8 "voucher." The voucher holder then looks for an apartment and comes to a rental agreement with a prospective landlord. As part of that agreement, the local or state housing authority that issued the voucher pays most of the rent directly to the landlord, while the tenant pays the remainder.

The federal Department of Housing and Urban Development provides funding for the program. The funds are distributed to local housing authorities, which administer the program. Housing authorities determine who is eligible to receive vouchers, keep waiting lists of applicants, and determine the amount of the Section 8 contribution based on HUD guidelines. The housing authorities also determine whether apartments meet minimum standards of health and safety by conducting inspections.

Section 8 bases its rent contribution on the "fair market value" of rental properties in the area. This

value is typically somewhat below the median rental for apartments in that area. Thus, under current guidelines, the fair market value for a one-bedroom apartment in Rutland County is \$549, and a two-bedroom apartment is \$670.

Section 8 voucher holders usually must contribute a small portion of the monthly rent payment themselves, using a formula based on their monthly income. If the total monthly rent for the apartment is above the HUD-determined fair market value, the tenant may be able to contribute more of their income to make up the difference. Their total expenditures for housing may not, however, exceed a specified percentage of their monthly income.

In order to be approved for Section 8, the apartment must pass an inspection for health and safety, similar to standard habitability inspections conducted by local authorities. The housing authority that issues the voucher conducts the inspection. If the inspection reveals any deficiencies, the housing authority may require that the landlord make repairs before the tenant may occupy the apartment.

Besides a regular lease, the landlord who accepts a Section 8 voucher must also sign an agreement with the housing authority. This agreement covers the payments made to the landlord, and outlines contingency procedures such as what to do if tenants fail to pay their share of the rent, or otherwise violate their lease.

SECTION 8 & VERMONT FAIR HOUSING LAW

Vermont's Fair Housing Act (9 V.S.A. §4503(a)) states: "It shall be unlawful for any person (1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because . . . a person is a recipient of public assistance." The law also specifies that a person may not "discriminate against, or . . .

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harass any person in the terms, conditions or privileges of the sale or rental of a dwelling" or "make, print or publish . . . any notice, statement or advertisement, with respect to the sale or rental of a dwelling" based on a person's receipt of public assistance. The "definitions" section of the same statute states that "Public assistance" includes any assistance provided by federal, state or local government, including medical and housing assistance."

Federal fair housing law does not include "receipt of public assistance" or "source of income" as a protected category. In other words, unlike Vermont law, a person may not bring a federal fair housing claim strictly because a landlord has refused to participate in the Section 8 program. Federal guidelines do not specify whether participation in the program by landlords is voluntary, but HUD also has not characterized participation in the program as mandatory. Some regional HUD offices have shown a willingness to accept Section 8 cases if there is evidence that the refusal to take Section 8 is related to discrimination based on another category, such as race, disability, or presence of minor children in the household. On the federal level, however, HUD does not appear to require landlords to consider the applications of potential tenants who receive Section 8.

Several states, most notably Connecticut and New Jersey, have provisions in their Fair Housing laws similar to Vermont's that prohibit discrimination against a potential tenant based on source of income, or because the person receives public assistance. Supreme Courts in those states have ruled that, based on those provisions, a landlord may not refuse to consider the application of a person who receives Section 8 because the landlord does not want to participate in the program. The Vermont Human Rights Commission, based on these precedents, has interpreted Vermont's Fair Housing Act in a similar way. While several Section 8 cases have come to court in Vermont, most of these cases to date have ended with settlements. As a result, there have been no Vermont Supreme Court rulings to date about the Human Rights Commission's interpretation of the Act.

It is important to note that, under the Fair Housing Act, a landlord is still entitled to "establish and enforce legitimate business practices necessary to protect and manage the rental property, such as the use of references" as long as these practices are not pretext for discrimination. In other words, while landlords are required to consider tenants who receive Section 8, they may base decisions on whether or not to rent to a Section 8 recipient based on references, credit checks, and similar non-discriminatory criteria. If a landlord has two prospective tenants, one who receives Section 8 and one who does not, and the Section 8 recipient has less favorable references, the landlord may decline to rent to the Section 8 recipient on that basis. However, a landlord may not ask for more or different references, credit checks, or make other alternate requirements for Section 8 recipients. Any "legitimate business practices" must be conducted equally for all applicants, and evaluated by the same criteria, whether or not the applicant receives Section 8.

Under the provision of the Fair Housing Act that prohibits making or publishing discriminatory statements, landlords must not include statements such as "This apartment does not receive Section 8" in advertisements, or tell prospective tenants that they do not accept Section 8 during rental inquiries. Nor may a landlord require extra deposits, or otherwise alter the terms or conditions of rental for Section 8 tenants compared to tenants who do not receive Section 8.

Housing and Reasonable Accommodations

The Vermont Fair Housing Act (9 V.S.A. §4503) states: "It shall be unlawful for any person . . . to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common areas."

What does this provision of the Fair Housing law mean for tenants, purchasers, housing providers and their agents? Since the passage of the Americans with Disabilities Act (ADA), courts have defined what a "reasonable accommodation" is, and what obligations it puts on parties to request and grant accommodations.

What is a Reasonable Accommodation?

A person with a disability may request a reasonable accommodation in the standard practices of a landlord, realtor, property manager, condo association, or other housing provider or agent, in order to be able to access a housing opportunity. A reasonable accommodation is intended to allow a person with a disability equal access to a housing opportunity that would be available to a person without that disability. It is not meant to provide opportunities or services beyond those available to others.

The law does not specify what kinds of accommodation requests are reasonable and which are not reasonable. What is reasonable always depends on the situation, and must balance the needs of both the disabled person and the housing provider. In general, if the request does not place an undue burden on the housing provider, and does not endanger the health or safety of others, the request will be considered reasonable. For example, if a condo owner asks that the nearest parking space to her unit be reserved as a handicapped parking space, or that the lines on the parking lot be redrawn to make a space van accessible, such a request will probably be reasonable. A request by a tenant to make major structural alterations to a rental unit, however, may not be reasonable, depending on the extent and nature of the requested alterations, whether the structure can be returned to its original condition, and the impact of the alterations on the safety and integrity of the building.

In general, the law requires that a person with a disability initiate the request for an accommodation. However, there are some cases when a housing provider becomes aware that a person has a disability, and that person may, because of that disability, be unable to initiate a request for an accommodation. In such a case, if there is an apparent need for an accommodation to allow equal access, the housing provider may be obligated to make an offer of an accommodation.

An accommodation request may be written or spoken. However, it is always preferable to make a request in writing, and to keep a copy of the request, in case a dispute arises later about the nature or timing of the request. For a housing provider, the best practice is generally to develop a reasonable accommodation request form and policy statement that is made available to all applicants. In this way, the applicant knows that an accommodation process is available, and the housing provider indicates a willingness to engage in discussions around accommodation requests.

Medical Documentation

When people with disabilities request reasonable accommodations, they do not give up their rights to keep their medical information confidential. A housing provider is not al-

lowed to ask people whether they have a disability, how severe the disability is, or what kinds of treatment or medication they receive. However, when a housing provider receives a request for an accommodation, the provider may request written documentation that the accommodation is medically necessary. For example, if a potential tenant asks to keep a cat as a psychiatric support animal, the landlord may ask the tenant to provide a letter from a physician stating that the cat is medically necessary to assist the tenant. The landlord may not ask the physician to specify the nature of the disability, or state why the cat is necessary. If a physician provides such a letter, the landlord may be required to allow the cat into the apartment, unless there is some other valid reason to exclude it.

Interactive Process

The process of requesting and discussing an accommodation should involve good faith interaction on both sides. Ideally, devising a reasonable accommodation should involve brainstorming and creative problem solving, with both parties contributing ideas for how to meet everyone's needs. Both parties should offer possible methods for allowing the person with a disability equal access.

There are no set rules that require one side or another to accept a specific kind of accommodation. The person with a disability is not required to accept the specific accommodation offered, and the housing provider is not required to implement the specific accommodation requested. Especially for complex situations, it should be a give-and-take process. When someone makes an accommodation request, the only firm legal obligation placed on the housing provider is to engage in a good faith discussion about the request and, if a reasonable accommodation is available, to offer an accommodation.

Physical Modifications to Premises

The Vermont Fair Housing Act states: "An owner shall permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person if the modifications are necessary to afford the person full enjoyment of the premises. The owner may, if reasonable, require the person to agree to restore the premises to the condition that existed before the modification, reasonable wear and tear excepted, but the owner may not require an additional security deposit for this purpose." In other words, if someone asks to install a ramp to allow wheelchair access to an apartment, the landlord must usually allow the person to install the ramp at the tenant's expense, unless the ramp would create an unreasonable risk or hazard to others. Please note that housing pro-

viders who receive direct federal subsidies (not Section 8 assistance) may be required under a different federal law to make such modifications at their own expense.

Undue Burden

In general, a housing provider is not required to provide an accommodation that creates an undue burden, usually a financial burden. There are no firm guidelines for what is an undue burden. Each case depends on the financial situation of the housing provider and the expense of the requested accommodation. If, however, a landlord owns a multiunit dwelling built after 1991 (the effective date of the Americans with Disabilities Act) that does not meet HUD standards for basic accessibility to people with disabilities, the owner may be required to make all necessary modifications, no matter how expensive. A housing provider is also not usually required to provide a person with a disability aides or assistive devices, or to provide services to a person with a disability not provided to other tenants or clients.

Direct Threat

In general, a housing provider is not required to provide an accommodation to a person if that accommodation poses a direct threat to the health and safety of others, or to the property. Before denying the accommodation, however, the provider should take active steps to evaluate the threat. If the housing provider believes that the accommodation will pose a threat, the provider must engage in an interactive process to determine whether the threat is real, based on objective information. If there is some way to mitigate the threat, short of denying the accommodation altogether, that option should be explored. For example, if a disabled tenant has a support dog, but fails to clean up after it, the landlord should first make a good faith effort to work with the tenant to solve the problem. If those efforts fail, the landlord may be within the law to direct the tenant to remove the animal.

Intractable Problems

Most accommodation requests are simple and easy to fulfill. Some, however, pose especially difficult problems for which there are no easy solutions. In these cases, it is possible that no reasonable accommodation exists. Again, the legal obligation on the housing provider is to make a good faith effort to find a solution, and to take as many steps as are reasonable to help the problem, even if the resolution is not ideal for both sides. If all parties approach the accommodation process in this good faith spirit, most conflicts over accommodation requests can be resolved amicably.



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FAIR HOUSING 101—Refresher Course

Both federal law and Vermont state law prohibit discrimination in housing. If you are renting an apartment or buying a home, you need to know what kinds of practices are illegal in order to protect your rights. If you are a landlord, realtor or home seller, you also need to know fair housing law, to make sure you are not illegally discriminating against your tenants or clients. The following is a very brief summary of federal and Vermont fair housing laws.

WHO IS PROTECTED?

Federal fair housing law protects people on the basis of race and color, religion, sex, national origin, disability, and family status (presence of minor children in a household). Vermont fair housing law includes all of these categories, and also protects people on the basis of age, marital status, sexual orientation, and receipt of public assistance. You may not be denied, or deny to someone, a housing opportunity because of any of these categories.

WHAT IS PROHIBITED?

Under fair housing law, it is unlawful for any person:

- To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling or other real estate to a person based on a protected category.

- To discriminate against or harass a person in the terms, conditions or privileges of the sale or rental of a dwelling based on a protected category.
- To make, print or publish a statement regarding the sale or rental of a dwelling or other real estate that shows a preference, limitation or discrimination based on a protected category.
- To represent to a person, based on a protected category, that a dwelling is not available when it is, in fact, available.
- To deny or discriminate against a person in making a loan based on a protected category.
- To deny a person access to listing services based on a protected category.
- To refuse to make reasonable accommodations for a person with a disability that ensures equal opportunity to enjoy a dwelling unit.

The law allows landlords to establish and enforce legitimate business practices to protect and manage the property, such as asking for references, credit checks, or noise regulations, as long as these practices are enforced consistently for all tenants. A landlord may restrict the presence of pets, but must grant a person with a disability a reasonable accommodation to have a service or support animal, if the need for the animal is verified by a doctor.

FAIR HOUSING 101, continued on page 7

AROUND THE NATION

Here are some recent Fair Housing cases that have been reported around the nation:

- In a 2002 lawsuit filed in Georgia state court, a student of Emory University claimed that the University failed to comply with the Fair Housing Act and the Americans with Disabilities Act in the construction of its dormitories and other buildings. As part of a settlement agreement, Emory has agreed to a \$7.5 million renovation project, focusing on increasing accessibility for people with disabilities.
- Properties Unlimited, a Buffalo, New York housing provider, had been found to have committed discriminatory acts in housing in the early 1990s by a HUD administrative law judge, and was ordered to cease discrimination in the rental of housing. HOME (Housing Opportunity Made Equal), a Buffalo Fair Housing organization, conducted tests to determine whether Properties Unlimited was in compliance with the court order. According to sworn affidavits, when an African-American tester tried to rent from the provider, the person was offered an unclean unit in disrepair, and was told it was the only unit available. A Caucasian tester was shown three different apartments. In settling the claim made by HOME, Properties Unlimited paid a total of \$13,000 in costs and civil penalties.
- In a 2003 settlement, the City of West Chicago agreed to pay a total of \$100,000 in damages and legal fees. The City allegedly practiced discriminatory selective enforcement of housing codes. The City allegedly conducted raids of certain homes, awakening families in the middle of the night, forcing them out of their homes and looking for evidence of overcrowding in their apartments. According to reports, 98% of the raids were targeted against Latino families. The City also agreed to revise enforcement procedures and develop policies to ensure equitable enforcement of overcrowding violations.
- In a consent agreement, the owners of an apartment complex near Rochester, New York agreed to pay \$300,000 to disabled tenants and to make over \$2 million in repairs to apartments to make them accessible. The Department of Housing and Urban Development determined that the inaccessibility of some apartments violated the federal Fair Housing law.
- In a case filed with the Connecticut Commission on Human Rights and Opportunities, a disabled woman won a settlement of \$25,000 against the Trumbull (CT) Housing Authority for making specific inquiries about confidential details of the woman's disabilities before they would rent her an apartment.
- The Ypsilanti Michigan Housing Authority agreed in a recent settlement to stop the practice of evicting victims of domestic violence from its apartment complexes. The charge contended that the Housing Authority's practice constituted sex discrimination, by punishing victims of domestic abuse.
- A federal District Court in Missouri awarded \$15,445 to a military family with three children against a landlord who refused to rent to them. The decision found that the landlord had refused to rent to the family because the family had children under age 3.
- An Evansville, Indiana apartment owner agreed to pay \$6500 to settle complaints that he discriminated against families with minor children and published discriminatory advertisements. The owner ran several ads containing the words, "Adult Living Luxury Apartments 50+." An investigation had revealed that the complex did not comply with guidelines for senior citizen's housing, and that applicants of any age were accepted as long as they did not have children.

CURRENT HUMAN RIGHTS COMMISSION CASES

The following is a listing of some cases that have recently come before the Vermont Human Rights Commission that have been released to the public. In some of these cases, the Commission has found evidence of illegal discrimination. In other cases, the Commission has reached a settlement with the parties before the investigation determined whether or not illegal discrimination occurred.

John and Diana Brennan v. Kingsbury Condominium Association

In this case, the Commission determined that the Kingsbury Condominium Association illegally discriminated against John and Diana Brennan based on disability. The Brennans, who have mobility problems, installed a lift in the stairwell of their second-floor condominium in order to gain access to their unit. They charged that the Association discouraged them from installing the lift, and took retaliatory actions against them by vandalizing the lift and other harassing actions. After the finding of illegal discrimination, the parties settled with an agreement that included an agreement by the Association not to discriminate or retaliate, issuance of a letter regarding the lift to all residents, training regarding fair housing law, development of a non-discrimination policy for the Association, and a waiver of the monthly condo fee for the Charging Parties.

Gary Grow v. Westbury Mobile Home Park and David and Betty Atkins

In this case, the Commission determined that the respondents illegally discriminated against Mr. Grow based on receipt of public assistance. Mr. Grow charged that the respondents refused to accept a check from the Department of Prevention, Assistance, Transition and Health as a rent payment, and that the respondents harassed him as a result of his attempt to make the payment. The respondents claimed that they had a blanket non-discriminatory policy refusing to accept checks from third parties as rent payment. The Commission determined that there were no grounds that the respondents illegally discriminated against Mr. Grow based on the harassment claim, but that they illegally discriminated against him by refusing to accept the check from PATH. The case is currently in settlement negotiations.

Donna Lemieux v. Bronwen Morris

In this case, the Commission determined that Bronwen Morris illegally discriminated against Donna Lemieux because of her minor children. Ms. Lemieux charged that she had a rental agreement with Ms. Morris for a 3-bedroom apartment, but that Ms. Morris told her she had to leave when she learned that Ms. Lemieux had minor children. Ms. Morris claimed that the apartment only had two bedrooms, and that allowing Ms. Lemieux's family to move in would have exceeded occupancy standards. The Commission determined that, even with occupancy restrictions, the apartment was large enough to house Ms. Lemieux and all of her minor children, and so determined that the refusal to rent constituted illegal discrimination. The case is currently in settlement negotiations.

Vermont Human Rights Commission v. Eric Jacobs

In this charge, a settlement was reached with the respondent without a determination whether illegal discrimination occurred. The charge claimed that Mr. Jacobs had published internet advertisements for rental housing that used terms such as apartments "for one person," "for two people," or for "couples" that indicated discriminatory preferences against families with children, or discrimination based on marital status. In the settlement agreement, Mr. Jacobs admits no wrongdoing, but agrees to cease using phrases in rental advertisements that indicate any preference, limitation or discrimination based on any protected category under the Fair Housing law, to modify the wording on the site to avoid the perception of such preferences, and to include a statement of non-discrimination in his web site.

Vermont Human Rights Commission v. De Capo Publishing, Inc. d/b/a Seven Days

In this charge, a settlement was reached with the respondent without a determination whether illegal discrimination occurred. The charge claimed that Seven Days printed advertisements for rental properties that included phrases such as "for one person," "perfect for one person," "professional or couple preferred," "mature professional wanted or preferred," that indicated discriminatory preferences against families with children, or discrimination based on age, marital status, and receipt of public assistance. In the settlement agreement, Seven Days admits no wrongdoing, but agrees to cease using phrases in rental advertisements that indicate any preference, limitation or discrimination based on any protected category under the Fair Housing law, and to include statements of non-discrimination and informational notices about Fair Housing law in the newspaper.

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WANT TO KNOW MORE?

The full texts of the federal and state fair housing laws can be found in many libraries, and on line at state and federal government web sites. The Vermont Fair Housing and Public Accommodations Act is 9 V.S.A. §4500 et seq., and the Federal Fair Housing Act is 42 U.S.C. §3601 et seq. Or contact the Vermont Human Rights Commission at 800-416-2010 or human_rights@state.vt.us. Or visit the HRC web site www.hrc.state.vt.us. Contact the Fair Housing Project at 800-287-7971 and www.cvoeo.org/vti/fair.htm.

IN THE NEXT ISSUE OF THE VERMONT FAIR HOUSING NEWS:
FAIR HOUSING AND FAMILIES WITH CHILDREN

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ORGANIZATION PROFILE - THE FAIR HOUSING PROJECT

The Fair Housing Project is a program of the Coordinated Statewide Housing Services division of the Champlain Valley Office of Economic Opportunity (CVOEO), a private, nonprofit organization. The Fair Housing Project works to eradicate housing discrimination in Vermont through outreach, education, and enforcement of fair housing laws.

Through the services of 15 different programs addressing fundamental issues of economic, social, and racial justice, CVOEO has provided services for low-income people, throughout Vermont's Champlain Valley since the early 1960s. The Fair Housing Project works with other CVOEO programs to increase fair housing awareness among clients and staff.

CVOEO implemented its first fair housing education and outreach campaign in 1995, and has since sub-contracted with Vermont Legal Aid to assist victims of discrimination. Most of the financial resources for this work come from the U.S. Department of Housing and Urban Development (HUD).

The work of the Fair Housing Project has increased the number of complaints processed and referred to private attorneys, the Vermont Human Rights Commission and HUD. In the past two years, over four hundred complainants have been assisted through screening, intake and referral processes. And more than two-dozen cases have reached settlement with the assistance of Vermont Legal Aid and the Vermont Human Rights Commission.

In 2003, the Fair Housing Project completed a testing study of the Vermont sales market finding 48% racial discrimination and 25% disability related discrimination. Audit testers found incidentally that 63% of the real estate agencies tested were inaccessible for people with mobility impairments. The result of these findings underscores the need for Fair Housing Act education. A previous rental audit showed similar findings in

racial discrimination as well as incidents of discrimination based on familial status and disability discrimination specific to accessibility and construction design. Detailed information regarding audit test findings as well as more information specific to fair housing law can be found online at www.cvoeo.org/vti/fair.htm.

The Fair Housing Project staff work closely with organizations such as the Affordable Housing Coalition, Fannie Mae, the Vermont Housing Finance Agency, the NeighborWorks Home Ownership Centers, and others associated with housing opportunity and affordable homeownership such as USDA rural development. Also, the project convenes the Housing Discrimination Work Group with members from the Human Rights Commission, Vermont Legal Aid, and Vermont Center for Independent Living. The work group identifies goals and activities to address the barriers to fair housing enforcement.

The Fair Housing Project has conducted fair housing trainings for several different organizations including the Vermont Refugee Resettlement Program, the Vermont State Department of Human Services, Sarah Holbrook Community Center, and the Vermont Association of Realtors and for State and Local Housing Authorities. In addition to trainings, the project has distributed over twenty thousand brochures (including Vietnamese, Russian, French, and Bosnian translations) to more than 120 different locations throughout the state. The Fair Housing Project has created public service announcements for TV and radio, and has placed signs on buses to help increase awareness of fair housing laws.

The Fair Housing Project plans to continue to raise awareness of fair housing issues throughout Vermont while assisting victims of discrimination. If you would like to learn more about the Fair Housing Project visit our website or call 800-287-7971.

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